IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6729 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORBHAI G PARMAR KARTA OF HUF OF DECD G M PARMAR - Petitioner(s)

Versus

AYUBBHAI IBRAHIMBHAI VOHRA - Respondent(s)

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Appearance :

MR IS SUPEHIA for Petitioner(s) : 1,
MR SK BUKHARI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1.2.1, 1.2.2,1.2.3

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/09/2005

ORAL JUDGMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 15th February 1989 in Revision Application No. TEN.B.A. 44

of 1986 in dismissing the said revision application and confirming the order passed by the Deputy Collector, dated 26.12.1985 in Tenancy Appeal No. 35/1980.

2. The dispute is with regard to land bearing Survey No. 96 and 97 of Village Padra and Survey No. 477 and 488 of Village Sokhada Khurd. The petitioner submitted an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act [“the Tenancy Act” for short] to declare him as a tenant of the land in question and also submitted an application under Section 70(n)(b) of the Tenancy Act for interim injunction restraining the respondent-landlord from dispossessing him, and initially the Mamlatdar and ALT granted ad-interim injunction, however subsequently dismissed the application under Section 70(n)(b) of the Tenancy Act. Thereafter after holding the enquiry the Mamlatdar held that the petitioner and others who were heirs of G.M. Parmar were the tenants of the aforesaid survey numbers; they were declared as tenants as per Section 70(b) of the Tenancy Act; and they were also entitled to purchase the land under Section 32 (ff) of the Tenancy Act. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT declaring the petitioner and other persons as 'tenants' under Section 70(b) of the Act, the respondents preferred appeal before the Deputy Collector who had allowed the said appeal and quashed and set aside the order

passed by the Mamlatdar and ALT, against which the petitioner preferred the revision application before the Gujarat Revenue Tribunal being Revision Application TEN.B.A. No. 44/1986 and the Revenue Tribunal by judgment and order dated 15th February 1989 dismissed the said revision application confirming the order passed by the Deputy Collector dated 26.12.1985 in Tenancy Appeal No. 35/1980. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri IS Supehia, learned advocate appearing on behalf of the petitioner, has vehemently submitted that both the authorities below have materially erred in not appreciating that the petitioner was the tenant since many years; the alleged surrender was illegal; and the surrender was required to be made as per the provisions of the Tenancy Act. He has also further submitted that in fact the Tribunal should have remanded the matter back to the Deputy Collector as the Deputy Collector has not properly appreciated the entire evidence. It is further submitted that both the authorities have materially erred in treating the surrender as a legal surrender under the provisions of the Tenancy Act. It is further submitted that considering the provisions of the Tenancy Act, more particularly Section 15 thereof it

was the mandatory requirement that the Mamlatdar should verify and satisfy himself about the surrender failing which the so-called surrender would be *non-est* in the eye of law. It is therefore requested to allow the present Special Civil Application.

4. On the other hand, Shri JM Patel, learned advocate appearing on behalf of the heirs of the respondent-landlord, has submitted that this is a petition under Section 227 of the Constitution of India and that there is a finding of fact given by both the authorities below that surrender was prior to 1954. Relying upon the judgment of the learned Single Judge of this Court in the case of Jitubhai Mastubhai Through Heirs Mohmmedbhai & Anr. Vs. Natvarlal Mahijbhai & Anr., reported in 2005 (2) GLR Page 1728. It is submitted that the amended Section 15 would not apply to surrender of tenancy prior to 1956 and as the amendment was made in 1956, Rule 2A was required to be followed in the case of surrender of tenancy. It is submitted that as held by the authorities below, more particularly the Gujarat Revenue Tribunal, the petitioner and the original-tenant had already surrendered the possession in 1954 and therefore the application under Section 70(b) of the Tenancy Act being not maintainable at all the Gujarat Revenue Tribunal has rightly rejected the revision application confirming the order passed by the Deputy Collector dated 26.12.1985 in Tenancy Appeal No. 35/1980.

5. Heard the learned advocates appearing on behalf of the parties. On appreciation of evidence, the Deputy Collector as well as the Gujarat Revenue Tribunal have held that possession was surrendered on 24.9.1953 which was done voluntarily and there was an acknowledgment by him before the Extra Aval Karkhoon and even the statement of original-tenant was recorded. Therefore, it appears that possession was surrendered by the original-tenant father of the petitioner in 1953-1954 considering the provision more particularly Rule 2A which was prevalent at the relevant time. As held by the learned Single Judge of this Court in the case of Jitubhai Mastubhai Through Heirs Mohmmedbhai & Anr. Vs. Natvarlal Mahijbhai & Anr., *(supra),* the provisions of amended Section 15 would not apply to surrender of tenancy i.e., prior to 1956 as the amendment was made in 1956 and prior to 1956 Rule 2A was required to be followed in the case of surrender of tenancy. Under the circumstances, there is no illegality committed by the Gujarat Revenue Tribunal and/or Deputy Collector in holding that the surrender of tenancy/possession by the father of the petitioner was in accordance with the law prevalent at the relevant time more particularly when as per Rule 2A there is a concurrent finding of fact given to that effect by both the authorities below. Once the possession was handed over and the tenancy was surrendered in 1954 the application under Section 70(b) of the Tenancy Act was not maintainable the petitioner was not declared as tenant under Section 70(b) of the Tenancy

Act. There is, therefore, no substance in the present Special Civil Application and the same requires to be dismissed.

6. For the reasons stated hereinabove, the petition fails. The judgment and orders passed by the Deputy Collector and the Gujarat Revenue Tribunal impugned in the present Special Civil Application are hereby confirmed. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.